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No. 85-2053

In The
Supreme Court of the United States
October Term, 1985

W.J. SCHNEIDER AND K.B. MARCUS,
Petitioners,

v.

CITY OF EAST ORANGE,
Respondent,

ATTORNEY GENERAL OF NEW JERSEY,
Intervenor-Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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COUNTERSTATEMENT OF THE CASE

Petitioners, W.J. Schneider and K.B. Marcus, are seeking, by writ of *certiorari*, to have this Court review a decision by the Supreme Court of New Jersey sustaining the constitutionality of a statute (*N.J.S.A.* 54:2-39)* on due process and equal protection grounds. Under the New Jersey tax appeal procedure, a taxpayer is entitled to file an initial tax appeal contesting his local property tax assessment with a county board of taxation or, if the assessment exceeds $750,000, directly with the Tax Court of New Jersey. A judgment entered by a county board of taxation is subject to further review at the Tax Court level.

When a taxpayer files an initial tax appeal either with a county tax board or the Tax Court, *N.J.S.A.* 54:3-27 requires the payment of 3/4 of the taxes assessed but not as a jurisdictional requirement to perfect the appeal. Rather, the statute permits a curing at a later date in the event the 3/4 payment of taxes standard was not satisfied at the time the tax appeal was filed. In the event a taxpayer files an appeal with the Tax Court from a county board of taxation judgment, *N.J.S.A.* 54:2-39 requires the payment of all local property taxes due at the time of filing a complaint as a jurisdictional prerequisite to perfecting the tax appeal.

Petitioners raise the following constitutional issues: 1) whether *N.J.S.A.* 54:2-39 violates the Equal Protection Clause in light of an allegedly more favorable payment

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* *N.J.S.A.* 54:2-39 was repealed by New Jersey Law 1983, Chapter 45, effective January 28, 1983. In its place, the New Jersey Legislature enacted *N.J.S.A.* 54:51A-1, which essentially incorporates the same standards contained in *N.J.S.A.* 54:2-39.

standard available under *N.J.S.A.* 54:3-27 to those taxpayers whose assessments exceed $750,000 and who opt to file their initial appeals directly with the Tax Court; 2) whether *N.J.S.A.* 54:2-39 violates the Due Process Clause by preventing taxpayers from litigating tax appeals unless the taxes due are timely paid.

The petitioners are the owners of real property located in the City of East Orange, County of Essex and State of New Jersey. For the 1979 tax year, the property was assessed for local property tax purposes at $824,900 (land—$123,900, building—$701,000). Petitioners filed a petition of appeal with the Essex County Board of Taxation for the 1979 tax year contesting the assessment imposed on their real property under the Local Property Tax Law, *N.J.S.A.* 54:4-1, *et seq.* The Essex County Board of Taxation, following a hearing, entered a judgment affirming the assessment. The petitioners filed a complaint with the Tax Court appealing the County Board judgment.

The respondent municipality, the City of East Orange, filed a motion with the Tax Court seeking a dismissal of the complaint under *N.J.S.A.* 54:2-39 because the petitioners had not paid all of the property taxes due on the date the complaint was filed. The Tax Court heard oral argument on the payment issue and then entered a judgment dismissing the complaint because of petitioners' failure to comply with the tax payment requirement of *N.J.S.A.* 54:2-39 (App. C-15a). Petitioners filed a notice of appeal with the New Jersey Superior Court, Appellate Division from the whole of the judgment of dismissal. The Attorney General intervened in the appellate proceeding to defend the constitutionality of *N.J.S.A.* 54:2-39.

The Appellate Division, in an opinion dated November 8, 1984, sustained *N.J.S.A.* 54:2-39 on due process and equal protection grounds. The Appellate Division found the statutory language to plainly reflect that the payment of the taxes due is a necessary prerequisite to jurisdictionally perfecting a complaint with the Tax Court. Such a procedure under *N.J.S.A.* 54:2-39 was rationally distinguishable from the payment requirement established by *N.J.S.A.* 54:3-27 and applicable to filing a petition of appeal with a county board of taxation. The court recognized that the latter statute did not incorporate a jurisdictional payment standard because the Legislature, in its broad discretion, determined that initial tax appeals should not be jurisdictionally conditioned by a payment of taxes requirement. The Appellate Division held that *N.J.S.A.* 54:2-39 properly employed a jurisdictional payment standard because the taxes due at the time of filing a complaint with the Tax Court following a county board tax appeal had previously been reviewed in a *quasi*-judicial setting. In addition, the Appellate Division held that the statutory payment of taxes requirement did not violate the Due Process Clause since the taxpayers' incidental burden of payment was clearly outweighed by the municipal concern in securing its tax revenues pending a challenge thereto (App. B1a-B13a).

The petitioners filed a petition for certification with the Supreme Court of New Jersey seeking review of the Appellate Division judgment. The petition was granted and, in a decision dated October 21, 1985, the Supreme Court of New Jersey affirmed the Appellate Division judgment substantially for the reasons expressed in the lower court's opinion (App. A1a-A3a).

ARGUMENT

POINT I

THE REQUIREMENT OF N.J.S.A. 54:2-39 TO PAY THE TAXES DUE AT THE TIME OF FILING A COMPLAINT WITH THE TAX COURT IS BASED ON RATIONAL AND PROPER LEGISLATIVE POLICY CONSIDERATIONS AND IS THUS CONSISTENT WITH THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION.

The procedure by which local property tax appeals are initiated in New Jersey either by taxpayers or municipalities is established by statute. Thus, *N.J.S.A.* 54:3-21 states in pertinent part that,

> A taxpayer feeling aggrieved by the assessed valuation of his property, or feeling that he is discriminated against by the assessed valuation of other property in the county, or a taxing district which may feel discriminated against by the assessed valuation of property in the taxing district, or by the assessed valuation of property in another taxing district in the county, may on or before August 15 appeal to the county board of taxation by filing with it a petition of appeal; provided, however, that any such taxpayer or taxing district may on or before August 15 file a petition of appeal directly with the tax court, if the assessed valuation of the property subject to the appeal exceeds $750,000.00. . . .

In accordance with this provision, a taxpayer or a municipality may file the initial tax appeal with a county board of taxation.* However, in the event that the assessment

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* A county board of taxation is an administrative agency authorized by statute to hear local property tax appeals in a *quasi*-judicial setting. *N.J.S.A.* 54:3-1 *et seq.* A separate county board of taxation sits in each of New Jersey's 21 counties. *N.J.S.A.* 54:3-2.

being challenged exceeds $750,000, either party may file a direct appeal with the Tax Court, thus bypassing the county board of taxation as the initial appeal forum. In the event the initial appeal is heard at the county board level, any party dissatisfied with the judgment entered by the county board may file an appeal with the Tax Court in accordance with *N.J.S.A.* 54:2-39. The Tax Court, therefore, has the jurisdiction to hear initial appeals where the assessment exceeds $750,000 and appeals challenging county board judgments.

The Legislature established certain payment requirements of the current year's taxes related to the filing of tax appeals with both the county boards of taxation and the Tax Court. *N.J.S.A.* 54:3-27 provides that,

> A taxpayer who shall file an appeal from an assessment against him shall pay to the collector of the taxing district no less than the first three quarters of the taxes assessed against him for the current tax year in the manner prescribed in R.S. 54:4-66 even though his petition to the county board of taxation might request a reduction in excess of one quarter of the taxes assessed for the full year. The collector shall accept such amount, when tendered, give a receipt therefor and credit the taxpayer therewith, and the taxpayer shall have the benefit of the same rate of discount on the amount paid as he would have on the whole amount.

This statute requires the payment of the first three quarters of the taxes assessed in conjunction with the filing of a tax appeal with a county board of taxation. In *Le Cross Associates v. City Partners*, 168 *N.J. Super.* 96, 401 *A.*2d 1099 (App. Div. 1979), certif. den. 81 *N.J.* 294, 405 *A.*2d 837 (1979), the court considered the application

of *N.J.S.A.* 54:3-27, which at that time established a 90% payment standard rather than the existing three-quarters requirement. In that case, the municipality had failed to raise the issue of nonpayment of taxes by the taxpayer at the county board level. The issue was raised for the first time on appeal by the municipality, which claimed that it did not waive said issue since the payment requirement was a jurisdictional condition necessary for the taxpayer to perfect its appeal with the county board of taxation. The court disagreed, noting that the statute was silent as to when payment of the tax monies had to be made and thus reasoned that the payment requirement of *N.J.S.A.* 54:3-27 was not a jurisdictional prerequisite to the filing of a tax appeal with the county board of taxation. The court concluded that noncompliance with the statute did not deprive the county board of jurisdiction to decide the appeal on its merits because the statute did not disclose any purpose to condition the power of the reviewing body to adjudicate upon the making of payment by the taxpayer. Rather, the taxpayer's obligation needed to be crystallized by the municipality through the filing of an appropriate defensive pleading, a motion to dismiss, or even by the institution of tax foreclosure proceedings. *N.J.S.A.* 54:3-27 was thus deemed a collection remedy that could be used by a municipality to dismiss a taxpayer's appeal for nonpayment of the requisite property taxes but was not considered a jurisdictional bar to filing an appeal.

With regard to the tax appeals filed by taxpayers with the Tax Court, the New Jersey Legislature required, under *N.J.S.A.* 54:2-39, that payment of all taxes due must

be made at the time of filing a complaint as a condition to perfecting the appeal. This statute provided that:

> Any party who is dissatisfied with the judgment of the county board of taxation upon his appeal may seek review of that judgment in the Tax Court by filing a complaint with the Tax Court, pursuant to rules of court within 45 days of the service of the judgment of the county board, and the Tax Court shall hear and determine all such matters and render its judgment thereon.
>
> At the time that a complaint has been filed with the Tax Court, *all taxes or any installments thereof then due and payable for the year for which review is sought must have been paid.* No interest shall be due and payable by the appellant for the period from November 1 of the current tax year to the date of filing the complaint. [Emphasis supplied].

In *Powder Mill I Associates v. Hamilton Tp.*, 190 *N.J. Super.* 63, 461 *A.*2d 1199 (App. Div. 1983), the court had occasion to consider whether the jurisdictional payment requirement under *N.J.S.A.* 54:2-39 applied to direct appeals filed with the Tax Court where the assessment exceeded the $750,000 jurisdictional standard. The court concluded that the Legislature did not intend *N.J.S.A.* 54:2-39 to apply to direct appeals and further held that the payment standard of *N.J.S.A.* 54:3-27 applied to direct appeals at the Tax Court level.

The Supreme Court of New Jersey sustained the holdings in *Powder Mill I Associates, supra,* and *Le Cross Associates, supra,* in the present case, thus resulting in the following payment requirements applicable to local property tax appeals:

1. Appeals filed by taxpayers with the county board of taxation, in accordance with *N.J.S.A.* 54:3-27, are

not subject to a jurisdictional payment requirement but are subject to a dismissal in the event the first three quarters of the taxes are not paid and in the further event the municipality moves for such a dismissal.

2. The payment standard under *N.J.S.A.* 54:3-27, which applies to county board appeals, also applies to tax appeals filed by taxpayers directly with the Tax Court and subjects a taxpayer's appeal to a dismissal in the event the first three quarters of the taxes are not paid at the time a motion for dismissal by the municipality is heard.

3. Taxpayers filing complaints with the Tax Court appealing a county board judgment must pay all of the taxes due at the time of filing as a jurisdictional prerequisite to perfecting the appeal.

Clearly the statutory interpretation of *N.J.S.A.* 54:3-27 and *N.J.S.A.* 54:2-39, as sustained by the Supreme Court of New Jersey in the present proceeding, is not reviewable by this Court. It has been consistently recognized that federal courts should intervene in the state judicial process only to correct wrongs of a federal constitutional dimension. *Smith v. Phillips,* 455 *U.S.* 209, 221 (1982). In evaluating issues concerning state law, a federal court must defer to the determinations by the state courts. *Kolender v. Lawson,* 461 *U.S.* 352, 355 (1983). Particularly with regard to the views of the state's highest court concerning issues of state law, such views are binding on the federal courts. *Wainwright v. Goode,* 464 *U.S.* 78, 83, 84 (1983).

The petitioners in this matter maintain that a constitutionally invidious discrimination results because of the different payment requirements that apply to tax appeals in categories 2 and 3. Specifically, they maintain that a taxpayer whose assessment exceeds $750,000 may avoid the jurisdictional payment requirement of *N.J.S.A.* 54:2-39 by filing a direct appeal with the Tax Court and thereby only paying the first three quarters of the taxes due in accordance with *N.J.S.A.* 54:3-27. The petitioners are not attacking the latter statute, but maintain that said statute provides a nonjurisdictional and thus a proper payment standard in comparison to the jurisdictional payment requirement of *N.J.S.A.* 54:2-39. This alleged disparity of treatment is characterized by petitioners as a violation of the equal protection standard of the Fourteenth Amendment.

It is fundamental to constitutional principles that a legislature has a wide range of discretion in establishing classifications and that such discretion is especially broad in the field of taxation:

> The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. . . . [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. . . . It has . . . been pointed out that *in taxation, even more than in other fields, legislatures possess the greatest freedom in classification.* Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular

> persons and classes. . . . [*Madden v. Kentucky,* 309 *U.S.* 83, 87-88 (1940); emphasis supplied].

See also *Regan v. Taxation with Representation of Washington,* 461 *U.S.* 540 (1983). These principles were reaffirmed in *Lehnhausen v. Lake Shore Auto Parts Co.,* 410 *U.S.* 356, 359 (1973):

> Where taxation is concerned and no specific federal right, apart from equal protection is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. As stated in *Allied Stores of Ohio v. Bowers,* 358 *U.S.* 522, 526-527, 3 *L.Ed.*2d 480, 79 *S.Ct.* 437:
>
> "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposed no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation."

The rationale for this broad view of a goverment's taxing powers has been explained as follows:

> [A tax] is . . . a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privilege of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. . . . Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who

> pay them, and would involve the abandonment of the most fundamental principle of goverment—that it exists primarily to provide for the common good. . . . This court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him. [*Carmichael v. Southern Coal & Coke Co.*, 301 *U.S.* 495, 522-523 (1931)].

The complexity of attempting to determine the fairness of taxing schemes was further recognized by this Court in *San Antonio School District v. Rodriguez*, 411 *U.S.* 1, 41 (1973), in which it considered challenges, on equal protection grounds, to Texas' statutory method for financing public education primarily from reveneus collected from local real property taxes. In affirming this statutory financing scheme, this Court stated that,

> [W]e stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues. Yet we are urged to direct the States either to alter drastically the present system or to throw out the property tax altogether in favor of some form of taxation. No scheme of taxation, whether the tax is imposed on property, income or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.

Similarly, in *Exxon Corp v. Eagerton,* 462 *U.S.* 176 (1983), this Court reiterated that it has traditionally applied a "lenient standard of rationality" to economic and commercial matters under equal protection analysis. Clearly, therefore, these decisions establish the broad discretion state legislatures may exercise in formulating fiscal arrangements and further caution against undue interference with a state's fiscal policies.

With these constitutional standards as a backdrop, it is important to analyze the actual operation of the statutory local property tax appeal process in New Jersey. At the initial appeal level, the same payment standard applies to all taxpayers, regardless of the assessed valuation of the property. Thus, a taxpayer filing a tax appeal with the county board of taxation must pay the first three quarters of the taxes in accordance with the applicable standards of *N.J.S.A.* 54:3-27. A taxpayer whose assessment exceeds $750,000 and who opts to file a direct appeal with the Tax Court must comply with that same payment standard. Therefore, all taxpayers, irrespective of the assessed valuation of their property, are subject initially to the same tax appeal payment standard at both the county board and Tax Court levels.

It is only when a taxpayer, whose initial appeal was heard by the county board, files a further appeal with the Tax Court, that the payment standard of *N.J.S.A.* 54:2-39 becomes applicable. This payment standard applies to every taxpayer filing an appeal with the Tax Court chal-

lenging a county board judgment regardless of the assessed valuation of the property in question.*

The statutory appeal procedure permitting a direct appeal to the Tax Court in the event a property assessment exceeds $750,000 is premised on the concept that such an appeal is sufficiently significant to warrant bypassing the county board of taxation. Since in many cases such substantial appeals proceed to the Tax Court anyway, the New Jersey Legislature appropriately provided the direct appeal vehicle in order to promote tax appeal economy and avoid duplicative hearings. The utilization of a monetary standard to determine the jurisdiction of a court is proper since it reflects on the complexity and significance of a dispute. The validity of the monetary standard is not questioned in this case.

Petitioners contend that, since *N.J.S.A.* 54:2-39 establishes a jurisdictional payment requirement that only applies to those taxpayers who file an appeal with the Tax Court from a county board judgment and does not apply to a direct appeal filed with the Tax Court by a taxpayer whose assessment is under $750,000, the statute improperly discriminates against the small taxpayer, *i.e.*, the taxpayer whose assessment is under $750,000. The New Jersey courts below properly questioned the standing of the petitioners to raise this issue of alleged unconstitutional dis-

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* This point is best illustrated in this case. The petitioners' property assessment exceeded $750,000, thereby allowing petitioners the option of having the appeal heard initially by the Tax Court. For whatever reason, the petitioners opted to have the county board hear the appeal. Following the county board judgment, petitioners filed a complaint with the Tax Court challenging the judgment. The payment requirement of *N.J.S.A.* 54:2-39 applied to petitioners as well as to all other taxpayers filing complaints challenging county board judgments, irrespective of the amount of the assessment.

parity since their property was assessed in excess of $750,000. Nevertheless, assuming such standing exists, it is obvious that petitioners completely disregard the applicable equal protection standards in their faulty analysis. The Equal Protection Clause requires that like taxpayers must be treated equally. A taxpayer who files an appeal with the Tax Court challenging a county board judgment has had the benefit of an initial hearing in a *quasi*-judicial setting before a county board of taxation. A taxpayer filing his initial appeal with the Tax Court has had no previous tax appeal hearing. As noted by the New Jersey courts, the New Jersey Legislature obviously felt that a taxpayer filing his initial appeal (either with the Tax Court or county board) should not be subject under *N.J.S.A.* 54:3-27 to a jurisdictional payment requirement because the assessment in question had not been previously reviewed by a *quasi*-judicial body. On the other hand, a taxpayer, whose assessment had been reviewed and perhaps revised by a county board, should comply with a jurisdictional payment requirement to perfect the appeal.

It is noteworthy that *N.J.S.A.* 54:2-39 requires the taxpayer to pay only those taxes due at the time of filing the complaint with the Tax Court. Thus, in accordance with existing practice in the State of New Jersey, an appealing taxpayer dissatisfied with a county board judgment would be mandated to pay only such taxes required by either the county board judgment or the original assessment, whichever is lower, in conjunction with filing the complaint with the Tax Court. This would be particularly beneficial to the taxpayer who receives a reduction in the assessment by the county board but files a complaint with the Tax Court seeking a further reduction. Such a taxpayer would only

be required to pay the taxes assessed in accordance with the county board judgment at the time of filing the complaint rather than paying the greater taxes as originally assessed. In the event the county board increases the assessment, the taxpayer would only be required to pay the taxes in accordance with the lower original assessment, since the original assessment may be restored on appeal.

It is clear, therefore, that the Legislature, in enacting *N.J.S.A.* 54:2-39, required the payment of taxes due at the time of filing the Tax Court complaint based on the rational reason that such taxes had received the approbation of the county board following a full hearing. The Legislature, on the other hand, provided that *N.J.S.A.* 54:3-27 not incorporate a jurisdictional payment prerequisite since the original assessment had not been previously subject to a *quasi*-judicial review. In the context of the Equal Protection Clause, the distinction between the two payment requirements is rationally justified. In light of the broad discretion afforded the Legislature in formulating tax appeal remedies under the Equal Protection Clause, the payment standards under *N.J.S.A.* 54:2-39 and 3-27 are properly distinguishable and thus constitutionally valid.

POINT II

THE STATUTORY REQUIREMENT OF N.J.S.A. 54:2-39 TO PAY TAXES AS A CONDITION TO LITIGATING AN ASSESSMENT IS CONSTITUTIONALLY SOUND SINCE IT ESTABLISHES A VALID GOVERNMENTAL MEANS FOR PROTECTING THE FINANCIAL STABILITY OF MUNICIPALITIES DURING THE PENDENCY OF A TAX APPEAL.

Petitioners maintain that the requirement under *N.J.S.A.* 54:2-39 to pay all taxes due at the time of filing

a complaint with the Tax Court violates procedural due process by denying them the right to litigate the propriety of the assessment because of nonpayment of the taxes. This due process argument is being presented by petitioners notwithstanding that they are entitled to a trial *de novo* at the Tax Court level permitting them the opportunity to fully relitigate the validity of the local property tax assessment.

The due process concept is flexible and requires procedural safeguards which are appropriate for a particular situation. *Morrissey v. Brewer,* 408 *U.S.* 471, 481 (1972). A tax assessment is validly imposed if the taxpayer is provided with an opportunity to challenge the levy before a competent tribunal prior to the assessment being irrevocably fixed. *Nickey v. Mississippi,* 191 *U.S.* 393, 396 (1934).

This Court has provided a three part analysis to be applied in considering whether a statutory scheme denies a party procedural due process:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [*Mathews v. Eldridge,* 424 *U.S.* 319, 335 (1976)].

In accordance with these standards, the petitioners have not been deprived of any due process rights. First, the petitioners' private interest is the temporary depriva-

tion of the local property taxes. However, if the petitioners prevail in the appeal, they will receive a refund from the municipality of the overpaid taxes in conjunction with interest from the date of payment at 5% per annum within 60 days of final judgment. *N.J.S.A.* 54:3-27.2. Also, the petitioners have not indicated any real prejudice that they would experience from the temporary deprivation of the tax money.

Second, the procedure for appealing tax assessments accords the petitioners the full opportunity for a fair and proper hearing. Petitioners already litigated the validity of the assessment at the county board level, resulting in a reduction of the assessment. At the Tax Court level, petitioners would be accorded a trial *de novo* encompassing a full evidentiary hearing presided over by a Tax Court judge with special expertise in the area of property assessment. See *N.J.S.A.* 2A:3A-2 and 13; N.J. Court Rule 8:1 *et seq.* The petitioners would be entitled to a further appeal of the Tax Court judgment to the New Jersey Superior Court, Appellate Division. N.J. Court Rule 2:2-3(a)(1). In the context of the procedural framework for appealing tax assessments, the petitioners' due process rights are fully secured.

Third, the taxing district has an obvious concern in collecting property taxes in as timely a fashion as possible. Since tax revenues constitute the lifeblood of government, prompt payment of taxes is essential to the proper functioning of government. *Flora v. United States,* 362 *U.S.* 145, 176 (1960); *Phillips v. Commissioner,* 283 *U.S.* 589, 597 (1931). These policy concerns are particularly significant with regard to the prompt payment of

the property tax which is the predominant source of tax revenues for municipalities. *Rosewell v. LaSalle National Bank*, 450 *U.S.* 503, 527 (1981). Therefore, in view of the important municipal concern in timely collecting local property tax revenues, the relatively slight and temporary deprivation of excess tax payments that would be experienced by the petitioners in the event they should succeed in the appeal and the appropriate safeguarding of the petitioners' interest through the tax appeal procedure, the petitioners were not deprived of due process because of the payment requirement established by *N.J.S.A.* 54:2-39.

The common practice of states in requiring the payment of taxes as a prerequisite to the filing of a tax appeal was recognized in *Rosewell v. LaSalle National Bank, supra,* in the context of considering the jurisdiction of federal courts to entertain state tax matters under the Tax Injunction Act, 28 *U.S.C.* § 1341. The latter statute provides that federal district courts,

> . . . shall not enjoin, suspend or restrain the . . . collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

In *Rosewell,* this Court concluded that the "plain, speedy and efficient" standard required the state tax appeal procedure to comply with certain minimal procedural criteria that provide "the taxpayer with a 'full hearing and judicial determination' at which she may raise any and all constitutional objections to the tax." 450 *U.S.* at 514. This Court noted that the Tax Injunction Act was enacted at a time when it was common for states to require the payment of contested taxes as a prerequisite to filing

a tax appeal and that such a procedure met the plain, speedy and efficient standard of the Tax Injunction Act. This Court observed that Congress, when it enacted the Tax Injunction Act, did not intend to have federal courts interfere with state tax appeal proceedings which required the payment of taxes as a precondition to contesting the tax:

> When it passed the Act, Congress knew that state tax systems commonly provided for payment of taxes under protest with subsequent refund as their exclusive remedy. The Senate Report to the Act noted:
>
> "It is the common practice for statutes of the various States to forbid actions in State courts to enjoin the collection of State and county taxes unless the tax law is invalid or the property is exempt from taxation, and these statutes generally provide that taxpayers may contest their taxes only in refund actions after payment under protest. This type of State legislation makes it possible for the states under various agencies to survive while long-drawn-out tax litigation is in progress." S. Rep. No. 1035, 75th Cong., 1st Sess., p.1 (1937). See H.R. Rep. No. 1503, 75the Cong., 1st Sess., p.2 (1937). [450 *U.S.* at 523].

Accordingly, the concept of the payment of taxes as a condition to contesting the imposition of the taxes has been recognized as a long established and basic facet of tax appeal proceedings in this nation.

Similarly, in *California v. Grace Bretheren Church*, 457 *U.S.* 393, 413-414 (1982), this Court again considered the jurisdictional limitations placed upon the federal courts under the Tax Injunction Act to review state tax provisions. This Court held that the California procedure, requiring the payment of a challenged unemployment

tax and the filing of a refund claim through the appropriate appeal route, constituted a "plain, speedy and efficient" state remedy under the federal statute. This Court has thus recognized the propriety of a statutory appeal procedure requiring the payment of taxes as a condition for contesting the tax imposition under the "plain, speedy and efficient" state remedy standard of the Tax Injunction Act. It would be clearly incongruous for this Court to sustain such a procedure under the "plain, speedy and efficient" standard if the payment prerequisite to filing a tax appeal violated fundamental due process. See *Bull v. United States,* 295 *U.S.* 247, 259, 262, 263 (1935). Therefore, the decisions in *Rosewell v. LaSalle National Bank, supra,* and *California v. Grace Brethren Church, supra,* conclusively confirm the validity of tax appeal payment requirements under procedural due process standards.

The policy concerns relating to requiring the payment of taxes prior to instituting a refund claim were further considered in *South Carolina v. Regan,* 465 *U.S.* 367 (1984). In *Regan,* this Court discussed the application of the federal Anti-Injunction Act, 26 *U.S.C.* § 7421 (a),* to a suit filed by the State of South Carolina seeking to enjoin the application of a federal statute denying federal tax exempt status to state obligations issued in bearer rather than registered form. This Court noted

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* The Anti-Injunction Act provides that

> . . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed [26 *U.S.C.* § 7421(a)].

that the underlying concept of the Anti-Injunction Act was the proper recognition by Congress that taxes should be paid before a challenge to their imposition may be instituted:

> The analysis in Williams Packing and its progeny of the purposes of the Act provides significant support for our holding today. Williams Packing expressly stated that the Act was intended to protect tax revenues from judicial interference *"and to require that the legal right to the disputed sums be determined in suit for a refund."* 370 *U.S.*, at 7, 8 *L.Ed.*2d 292, 82 *S.Ct.* 1125 (emphasis added). Similarly, the Court concluded that the Act was also designed as "protection of the collector from litigation *pending a suit for a refund,"* *Id.*, at 7-8, 8 *L.Ed.*2d 292, 82 *S.Ct.* 1125 (emphasis added). The Court's concerns with protecting the expeditious collection of revenue and protecting the collector from litigation were expressed in the context of a procedure that afforded the taxpayer the remedy of a refund suit. [465 *U.S.* at 376].

This same concept of premising a challenge to a tax by the payment thereof is equally valid in the context of *N.J.S.A.* 54:2-39.

Therefore, in conclusion, the payment requirement mandated by *N.J.S.A.* 54:2-39 constitutes a means for taxing districts to secure delinquent taxes pending the resolution of an appeal at the Tax Court level. Since the interest of the municipality in securing the prompt collection of delinquent taxes is clear and because the taxpayer subject to the statutory payment requirement is afforded a full opportunity to litigate the contested taxes, the jurisdictional payment standard under *N.J.S.A.* 54:2-39 is consistent with due process standards.

The petition for writ of *certiorari* plainly does not raise a question of constitutional dimension which would warrant the granting of such extraordinary relief. The precedents cited in this brief unequivocally establish that neither the equal protection nor due process challenge to the validity of *N.J.S.A.* 54:2-39 raised by petitioners presents a significant issue justifying the further review by this Court. The constitutional principles applied by the New Jersey courts below are well established and were correctly applied to sustain the validity of *N.J.S.A.* 54:2-39. Therefore, the petition should be denied.

CONCLUSION

For the aforementioned reasons, it is respectfully submitted that the petition for writ of *certiorari* should be denied.

Respectfully submitted,

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